



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,713	12/27/2001	Zhang Shao Wei	P1395	8628

24394 7590 05/04/2005

LARIVIERE, GRUBMAN & PAYNE, LLP
19 UPPER RAGSDALE DRIVE
SUITE 200
MONTEREY, CA 93940

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/033,713

Applicant(s)

WEI, ZHANG SHAO

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-44 is/are pending in the application.
- 4a) Of the above claim(s) 34, 35 and 40-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32, 33, 36-39, 43 and 44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 34, 35, and 40-42 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the originally claimed invention was drawn only to a container for containing a fluid. The positive recitation of a specific fluid, and more specifically a liquid cleanser or emulsifier, presents an independent invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 34, 35 and 40-42 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Drawings

2. The drawings were received on December 17, 2004. These drawings are approved.

Claim Rejections - 35 USC § 112

3. Claims 36-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 36 and 38 each recites the limitation "said liquid cleanser" in line 2. There is insufficient antecedent basis for this limitation in the claim since the liquid cleanser in the preceding claims is not positively recited as part of the inventive container.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 3727

5. Claims 32,43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perali et al (US 4,914,762) in view of Marrone, II (US 5,007,449).

It is noted the claims are directed only to a container intended to be used for containing a liquid cleanser.

Perali teaches a flexible container 1 comprising at least two flexible members 2,3 forming a chamber therebetween for containing fluids, said flexible members have a modulus of elasticity conducive to liquid containment and gaseous inflation (see col. 2, lines 33-35), and flexible closure means 7 coupled to at least one of said flexible members, having a hollow cylinder having an open end and a sealed end, said sealed end extending into the chamber for selective flow restriction and for repetitive filling and expelling fluids from said chamber in response to squeezing force selectively applied to said closure means, said closure means further including a stopper means for sealing said open end of said hollow cylinder. Perali does not teach a transfigurable slit disposed near the sealed end of the hollow cylinder.

Marrone teaches a flexible container having a closure means having a hollow cylinder having a open end and a sealed end, said sealed end extending into the chamber, and a transfigurable slit disposed near the sealed end for selective flow restriction and for repetitive filling and expelling fluids from said chamber in response to squeezing force selectively applied to said closure means, said closure means further including a stopper means for sealing said open end of said hollow cylinder with a transfigurable slit 4 disposed near the sealed end 5.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a transfigurable slit disposed near the sealed end of a hollow cylinder. Doing so prevents deflating of the container or loss of contents should the cap be removed accidentally or intentionally wherein no pressure is applied to the valve.

Art Unit: 3727

Regarding claims 43 and 44, the bag is of a recognizable geometric shape, i.e., rectangular.

6. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 32 above, and further in view of Greywacke (US 3,368,560).

Perali as modified teaches the claimed flexible container except for a hanger on the flexible container.

Gewecke teaches a flexible container having a means for hanging the container attached to one of the flexible members.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further provide a hanging means to the modified container of Perali as taught by Gewecke. Doing so allows for conveniently hanging the container for display and/or drying by allowing excess fluid to drain toward the closure means.

7. Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 32 above, and further in view of Canonica, Jr. (US 3,139,956).

Perali as modified teaches the claimed flexible container except for an insert in the container.

Canonica teaches it is known to provide a transparent container with an insert.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the container of Perali to provide an insert in the container chamber. Doing so provides an entertaining and enjoyable feature to the bag.

8. Claims 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 33 above, and further in view of Canonica.

Perali as modified teaches the claimed flexible container except for an insert in the container.

Art Unit: 3727

Canonica teaches it is known to provide a transparent container with an insert.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the container of Perali to provide an insert in the container chamber. Doing so provides an entertaining and enjoyable feature to the bag.

Response to Arguments

9. Applicant's arguments filed December 17, 2004 have been fully considered but they are not persuasive.

In response to applicant's argument that the bag of Perali is not disclosed as containing a liquid cleanser, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

The arguments regarding claims 34 and 35 have been considered. However, in view of the election by original representation, the arguments are moot.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

Art Unit: 3727

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

12. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

Typed or printed name of person signing this certificate

Signature_____

Date_____

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

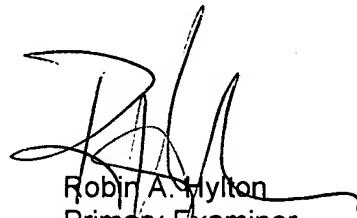
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (571) 272-4549.

Art Unit: 3727

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148 or may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
May 1, 2005



Robin A. Hylton
Primary Examiner
GAU 3727

approved



1/5

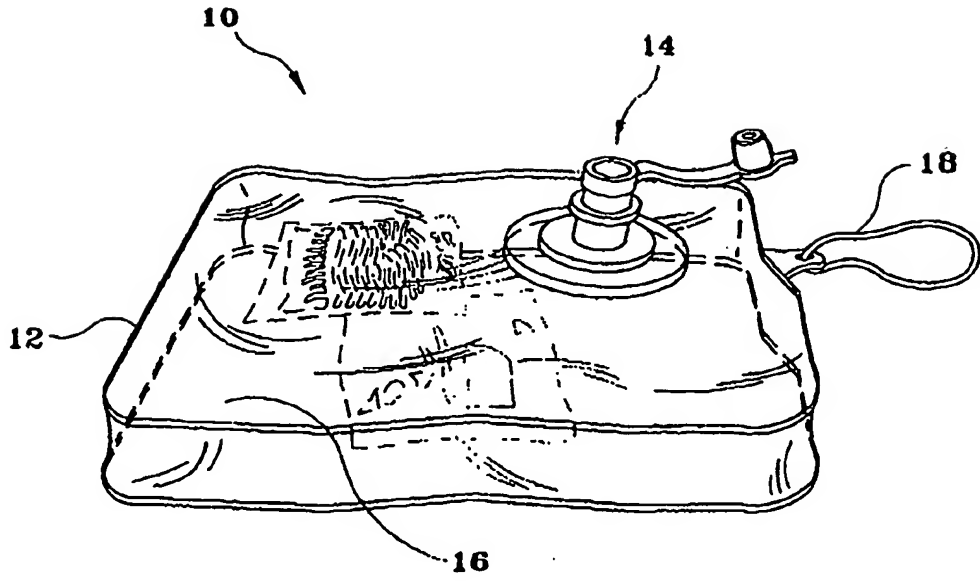


Figure 1

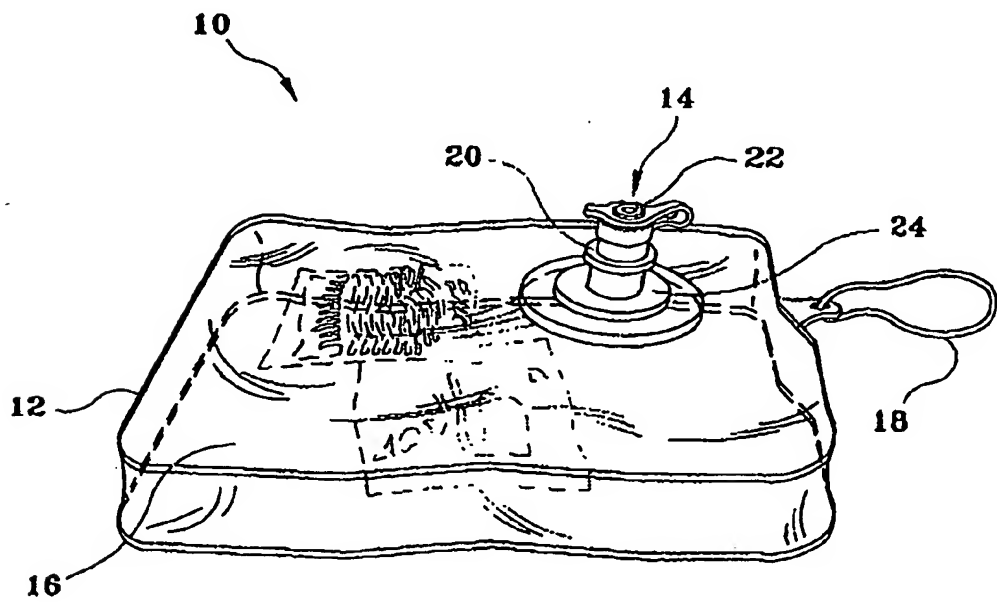


Figure 2

U.S. Serial No. 10/033,713
Amendment in Response to Office Action
dated 9/20/04; Docket No. P1395 BAC
Replacement Sheet 1 of 5



2/5

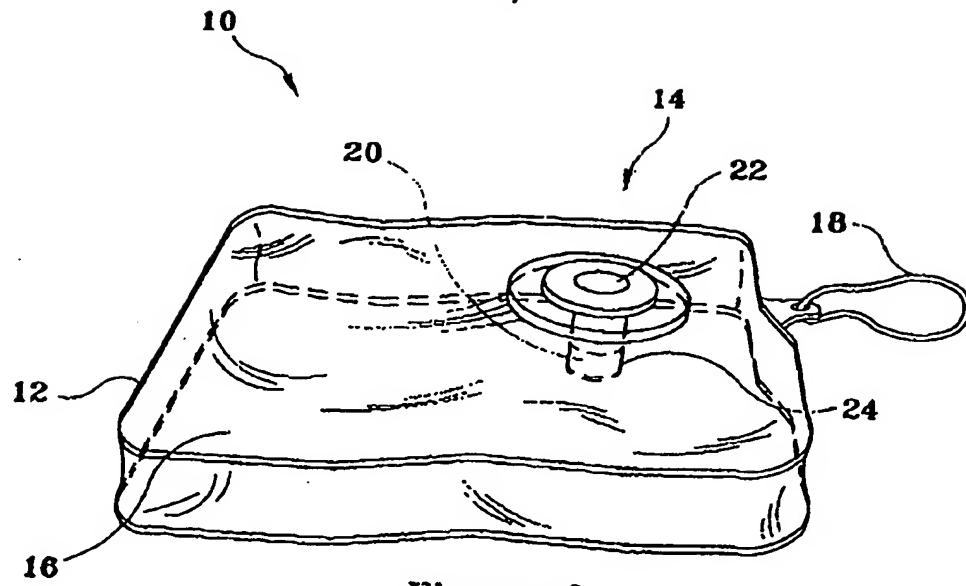


Figure 3

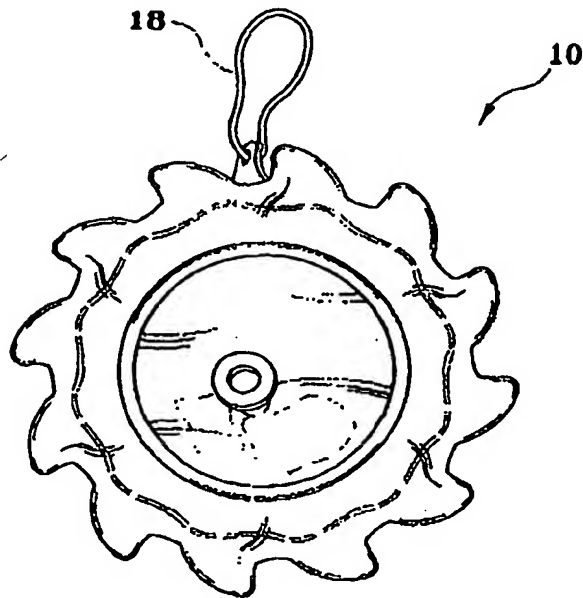


Figure 4

U.S. Serial No. 10/033,713
Amendment in Response to Office Action
dated 9/20/04; Docket No. P1395 BAC
Replacement Sheet 2 of 5



3/5

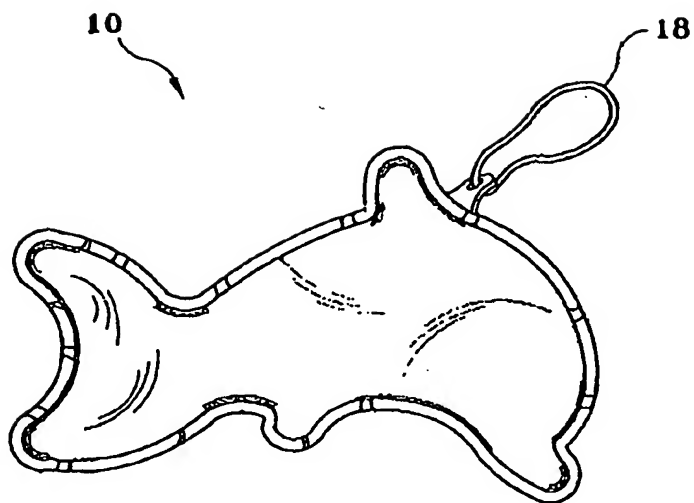


Figure 5

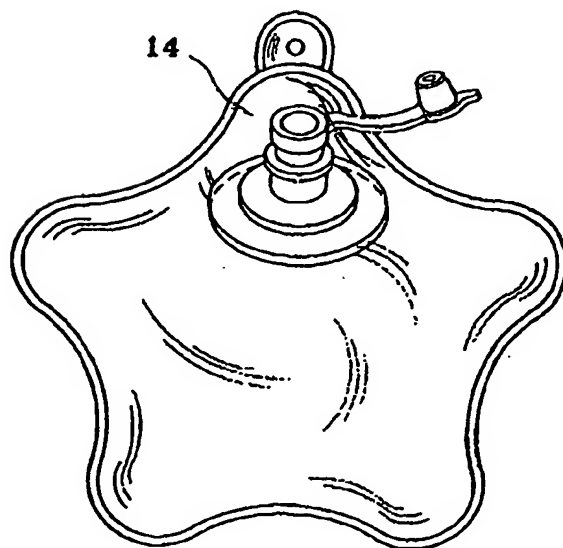


Figure 6

U.S. Serial No. 10/033,713
Amendment in Response to Office Action
dated 9/20/04; Docket No. P1395 BAC
Replacement Sheet 3 of 5



4/5

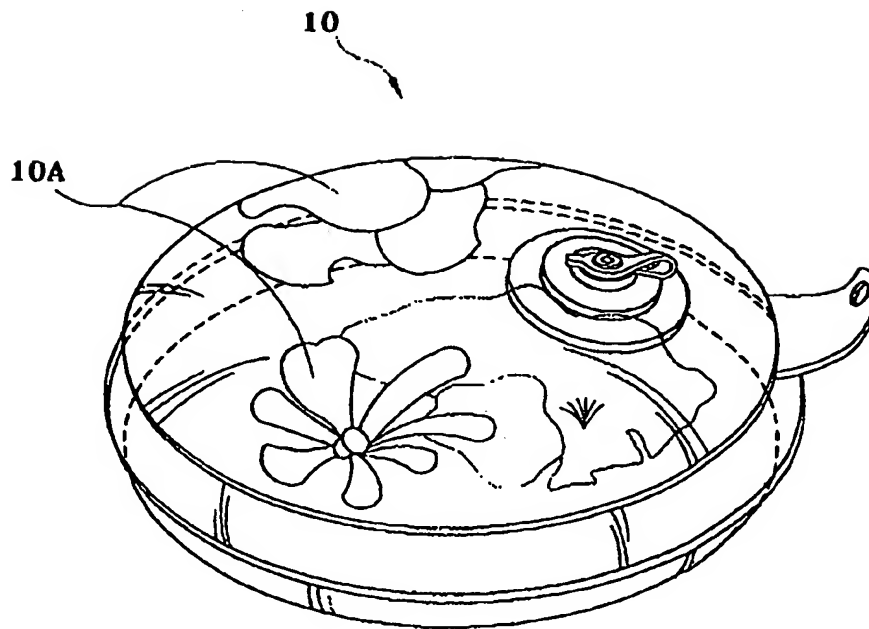


Figure 7

U.S. Serial No. 10/033,713
Amendment in Response to Office Action
dated 9/20/04; Docket No. P1395 BAC
Replacement Sheet 4 of 5



5/5

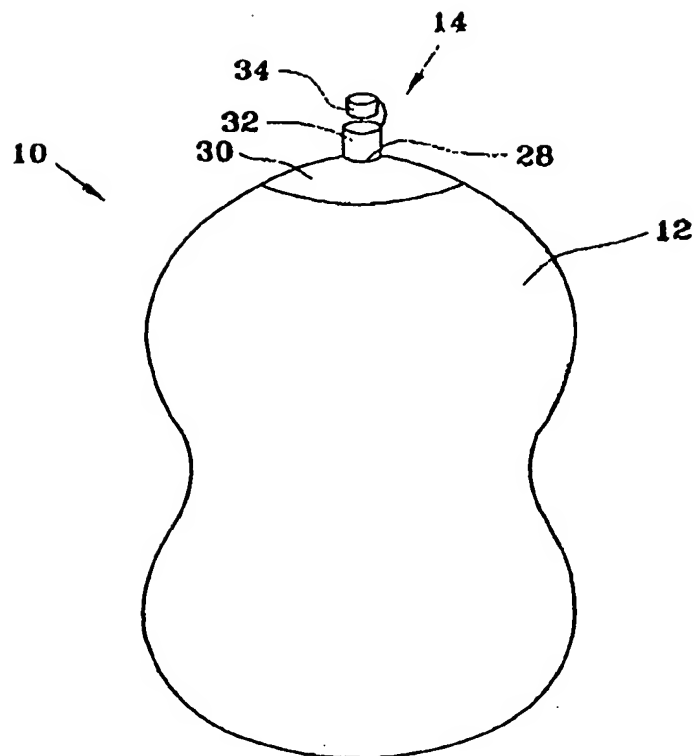


Figure 8

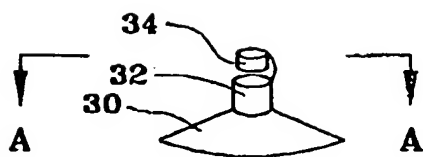


Figure 9

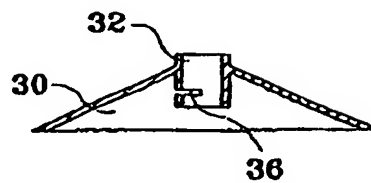


Figure 10

U.S. Serial No. 10/033,713
Amendment in Response to Office Action
dated 9/20/04; Docket No. P1395 BAC
Replacement Sheet 5 of 5